IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1958.

No. 49.

LOCAL 24 of the INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL-CIO, and KENNETH BURKE, President and Business Agent of Local 24,
Petitioners,

vs.

REVEL OLIVER and A. C. E. TRANSPORTATION COMPANY, INC., and INTERSTATE TRUCK SERVICE, INC.,
Respondents.

ON WRIT OF CERTIORARI
To the Supreme Court of Ohio and the Court of Appeals of the State of Ohio, Ninth Judicial District.

BRIEF FOR PETITIONERS.

DAVID PREVIANT,
511 Warner Theatre Building,
Milwaukee 3, Wisconsin,
Counsel for Petitioners.

Of Counsel:
ROBERT C. KNEE,
Winters Bank Building,
Dayton, Ohio,
BRUCE LAYBOURNE,
Second National Building,
Akron, Ohio.

St. Louis Law Printing Co., Inc., 415 N. Eighth Street. CEntral 1-4477.

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BRIEF FOR PETITIONERS.

OPINIONS BELOW.

The memorandum opinion of the Court of Common Pleas, Summit County, Ohio (R. 152-174) is unreported. The opinion of the Court of Appeals of the State of Ohio, Ninth Judicial District (R. 237-249) (referred to as the "Court of Appeals") is unreported. The order of the Ohio Supreme Court dismissing Petitioners' appeal (R. 271) is reported in 167 O. S. 299, 147 N. E. 2d 856.

JURISDICTION.

The Ohio Supreme Court, on January 29, 1958, entered an order dismissing Petitioners' appeal (R. 271) from the final judgment of the Court of Appeals (R. 249-258). The Petition for Certiorari was filed on April 16, 1958, and was granted May 26, 1958 (R. 272). The jurisdiction of this Court rests on 28 U. S. C. 1257 (3).

QUESTIONS PRESENTED.

Does a state court have jurisdiction to enjoin the operation of, or to declare illegal under state law, an agreement between common carriers and a union representing their employees, under which agreement a certain group of drivers, who bring their own equipment to the service of the carrier and drive such equipment in such service, are expressly made employees and are protected in their enjoyment of pensions, group insurance, paid holidays and vacations, seniority rights and of union wages by the establishment of a minimum lease rate for the use of their equipment:

(a) In view of the fact that the relationship between the parties and the subject matter over which they are required to bargain must be determined by an application of the Labor Management Relations Act of 1947, or

(b) In view of the exclusive jurisdiction of the Interstate Commerce Commission over motor carriers engaged in interstate commerce conferred by the Interstate Commerce Act.

CONSTITUTIONAL PROVISIONS INVOLVED.

The constitutional provisions involved are Article I, Section 8 and Article VI, Section 2, of the United States Constitution. Article I, Section 8, in material part, provides:

"The Congress shall have power . . . to regulate commerce . . . among the several states . . . And to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution in the government of the United States, or in any department or officer thereof."

Article VI, Section 2, in material part, provides:

"This constitution, and the laws of the United States which shall be made in pursuance thereof; . . . shall be the supreme law of the land, and the judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding."

STATEMENT.

Petitioner, Local 24 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is a labor organization having its offices in Akron, Ohio (R. 50). Petitioner, Kenneth Burke, is the president and business representative of Local 24 (R. 49). The Petitioners are referred to collectively as the "Union" in this brief.

The Respondent, Revel Oliver, is a resident of Ohio (R. 53) and a member of the Union (R. 76). The two employers involved, A. C. E. Transportation Company, Inc. (referred to as "A. C. E.") and Interstate Service, Inc., (referred to as "Interstate") are common carriers certificated by the Interstate Commerce Commission and the Ohio Public Service Commission and are engaged in interstate commerce (R. 106, 225). Although A. C. E. and Interstate were joined as co-defendants with the Union in the state court proceedings (R. 1), they have, in the course of this litigation, taken a position adverse to that of the Union. For this reason they are joined here as Respondents. Both A. C. E. and Interstate are parties to

the Central States Over-the-Road Motor Freight Agreement (referred to as the "Central States" agreement) (Ex. 1, R. 144).

The vast majority of the trucking companies in twelve midwestern states[1] are parties to the Central States agreement which covers between 3,000 and 3,500 employers and 45,000 to 50,000 truck drivers, all engaged in what is known as over-the-road or intercity trucking (R. 98). This multi-employer multi-state agreement is in effect with approximately 500 motor freight carriers and covers 6,000 truck drivers working in the service of these carriers in the State of Ohio alone (R. 97). Of the 6,000 Ohio truck drivers, 90 to 95% drive equipment owned by the carrier. The balance drive equipment which they own and lease to the certificated carrier (R. 98).

The provisions of the Central States agreement involved in this case are also currently in effect with the majority of motor freight carriers located in ten southern states[2] (R. 217), the New England states, New York, Pennsylvania and Virginia (R. 223).

Article 32 of the Central States agreement (Ex. 1, pp. 38-46, R. 144), the enforcement of which was enjoined by the Ohio courts (R. 249-258), applies to the owners of motor vehicle equipment who lease such equipment to a certificated carrier only if the owner "is also employed as a driver" (Ex. 1, p. 38n, R. 144). Although modified from time to time, Article 32 has been included in the Central States agreement from the inception of multi-state negotiations in 1938 (R. 112). The typical owner-operator,[3] intended to be covered by the Article is a truck

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[1] Michigan, Ohio, Indiana, Illinois, Wisconsin, Minnesota, Iowa, Missouri, South Dakota, North Dakota, Nebraska, Kansas and Louisville, Kentucky.

[2] Arkansas, Louisiana, Oklahoma, Texas, Alabama, Georgia, Florida, Kentucky, Mississippi and Tennessee.

[3] Article 32 uses the terms "owner-operator" and "owner-driver" interchangeably. The terms are similarly used throughout this brief.

driver who owns a single piece of motor vehicle equipment and is hired by a certificated carrier to operate such equipment in the service of the carrier (R. 216-217). An owner-operator typically has no license or certificate which would permit him to engage in the transportation business (R. 71).

Article 32 requires certificated carriers to exercise exclusive control over drivers who operate leased equipment, as drivers, in the service of the carrier (Ex. 1, pg. 39, R. 144). The purpose of this requirement is to insure the "employee" status of such truck drivers, thereby assuring the driver's enjoyment of union wages and working conditions, social security, workmen's compensation, unemployment compensation and other similar benefits (R. 219-220). Under this provision the drivers of Revel Oliver's equipment become employees of the carrier-lessee. Revel Oliver becomes an employee of the carrier only when he himself drives his own equipment in the service of the carrier.

Under Article 32, owner-drivers obtain seniority rights (Ex. 1, pp. 38-39, R. 144), vacation and holiday pay (pp. 38-39, 46-48), health and welfare coverage (pp. 38-39, 49-50), pensions (pp. 38-39, 50-52), separate checks for driver's wages (pg. 39), and payment of taxes, tolls, license fees, social security and workmen's compensation by the carrier (pg. 40). Schemes designed to circumvent the payment of the contractual wage scale are prohibited (pp. 42-44).

Article 32 also provides minimum rates "for leased equipment owned and driven by the owner-driver" (Ex. 1, pg. 41, R. 144). As the Article makes clear, it is applicable only to the minimum rates for equipment which is actually driven by its owner. The Article does not concern itself with lease rates for owner-driven equipment in excess of the minimums provided in the agreement. The sole purpose of the minimum lease rate requirement is to

protect the owner-driver's negotiated wage (R. 114-115, 138-139, 219). For, if the certificated carrier is permitted to require the owner-driver to operate his equipment at less than actual cost, the owner-driver's negotiated wage as a driver under the Union contract is reduced to the extent of the operating loss.

For example, under Article 25 of the Central States agreement, all drivers operating tandem axle units receive, as wages, 8.32¢ per mile on all runs (Ex. 1, pg. 28, R. 144). Article 32, Section 12 (b) guarantees to an owner-driver an additional, minimum lease rate of 10¢ per mile for a tandem axle tractor which he owns and drives. Because the minimum lease rate of 10¢ per mile represents the actual cost of operation (R. 113-114, 121, 129, 215-216), a lease rate of 8¢ per mile would result in an operating loss of 2¢ per mile. Accordingly, the owner-driver's wage as a driver would be reduced by 2¢ per mile. In the example just given, the owner-driver's real driving wage would be 6.32¢ per mile rather than the negotiated wage rate of 8.32¢ per mile. In other words, the owner-driver would have to take 2¢ per mile out of his wage pocket and put it in his equipment-operating pocket to make up the operating deficit. To prevent such practices which necessarily result in a reduction of wages, Article 32, Section 12 was included in the Central States agreement (R. 113-115, 123, 138-139).

Extensive, separate cost studies by the Union and the carriers preceded the establishment of the minimum lease rates (R. 113, 120, 215-216). As indicated above, these minimums represent the actual cost of operating the equipment. No attempt was made to negotiate an equipment-operating profit for the owner-drivers (Ex. 1, pg. 42, R. 144; R. 215).

Revel Oliver owns six tractors and four trailers which are leased to either A. C. E. or Interstate (R. 53-54).

He actually drives only on infrequent occasions (R. 71). This suit was commenced by Revel Oliver to restrain the enforcement of Article 32 of the Central States agreement because of alleged conflict with the Ohio anti-trust laws (Ohio Rev. Code, Sec. 1331,01). An *ex parte* restraining order was issued contemporaneously with the filing of the action (R. 13-14).

The Union's answer denied any violation of state law; and, in addition, affirmatively pleaded several constitutional defenses. The Union alleged that jurisdiction over the subject matter of the controversy was vested exclusively in the National Labor Relations Board (referred to as the "Labor Board"); and, alternatively, urged the pre-emptive character of the Interstate Commerce Act, 24 Stat. 379, as amended, 49 U. S. C., Sec. 1 *et seq.*, as a barrier to the exercise of state jurisdiction to regulated alleged restraints of trade in inter-state motor transportation (R. 22-23).

Notwithstanding these objections, the Ohio courts asserted jurisdiction to construe and apply the National Labor Relations Act, 61 Stat. 136, 29 U. S. C., Sec. 151 *et seq.* (referred to as the "National Act") and the Interstate Commerce Act. The Ohio courts held that none of the provisions of Article 32 constituted appropriate subjects for bargaining under the National Act and that Revel Oliver is an "independent contractor" within the meaning of the National Act (R. 180, 246, 248-249, 256). The state courts also rejected the Union's constitutional defense predicated upon the Interstate Commerce Act (R. 246, 248). A permanent injunction restraining the enforcement of Article 32, in its entirety, was entered on September 30, 1957, by the Court of Appeals (R. 249-258), and on January 29, 1958, the Ohio Supreme Court entered final judgment dismissing the Union's appeal on the ground that "no debatable constitutional question is involved" (R. 271). The case is here by route of certiorari (R. 272).

SUMMARY OF ARGUMENT.

Decisional history in this Court establishes that Congress has vested the regulation of the many and varied adjuncts of the collective bargaining institution exclusively in the Labor Board. Thus, the solicitation of non-union employees, representation elections, strikes, picketing and boycotts all fall within the pre-empted area. It would be anomalous, indeed, if the product of the process, the collective bargaining agreement, were not similarly pre-empted.

Study of the National Act's declaration of policy, substantive provisions and legislative history convincingly demonstrates that such an anomalous result was not intended by Congress. Permissible areas of state regulation were carefully and specifically defined. See: Section 14 (b).

This Court has held in cases arising under both the Railway Labor Act and the National Labor Relations Act that the states may not regulate the substantive provisions of collective bargaining agreements between employers and unions subject to federal jurisdiction. *California v. Taylor*, 353 U. S. 553; *Local Union No. 89 v. American Tobacco Co.*, 348 U. S. 978. Alleged violations of state anti-trust legislation do not resuscitate otherwise pre-empted state jurisdiction. *Weber v. Anheuser-Busch, Inc.*, 348 U. S. 468.

Under the National Act, labor organizations, when acting in the capacity of collective bargaining agents, have wide discretion and authority to enter into collective agreements which will effectively resolve unusual as well as typical employment controversies. *Ford Motor Co. v. Huffman*, 345 U. S. 330. Use of owner-operators has posed a typical and recurrent labor problem in the motor transportation industry for over twenty years. *Milk-*

wagon Drivers Union v. Lake Valley Farm Products, 311 U. S. 91. To insure the "employee" status of owner-operators and to protect their wage as a driver, the Union sought to obtain, through collective bargaining, appropriate contractual safeguards. The product of the negotiations was Article 32 of the Central States agreement. This Article, which was enjoined by the Ohio courts, has been an integral part of the bargaining structure in the midwest trucking industry since the inception of multi-state negotiations in 1938.

Except for the provisions which establish the "employee" status of all drivers of leased equipment whether owner-drivers or not, the Article is limited in application to individuals who both *own and drive* their equipment in the service of the carrier. For example, the minimum lease rate provisions of the Article apply only to "leased equipment owned and driven by the owner-driver" (Ex. 1, pg. 41, R. 144). The minimum lease rates represent the actual cost of operating the equipment (R. 113-114, 121, 215-216). The sole purpose of the minimum lease rates is to prevent the carrier from requiring the owner-operator to operate his equipment at a loss, thereby causing a reduction of his negotiated wage as a driver (R. 114-115, 138-139, 219).

Most of the remaining provisions of the Article also are designed to meet specific problems created by the efforts of carriers to evade the wage scale in the agreement. Additionally, however, owner-operators are guaranteed seniority and grievance procedure rights.

Under the express terms of the National Act, the decisions of this Court and of the Labor Board, each and every provision contained in Article 32 falls well within the ambit of federally protected-bargaining. If the judgment below is permitted to stand, serious conflicts are bound to occur with respect to the carrier's duty to bargain under the National Act, the Labor Board's jurisdic-

tion to define "employee" status for purposes of the National Act, and the establishment of multi-employer, multi-state bargaining units. Such conflicts afford an ample basis for reversal of the judgment below. This, independently of the fact that the Ohio courts have denied federally protected labor rights.

Furthermore, the Ohio courts by superimposing anti-trust notions upon the federally protected collective bargaining structure have adopted a policy expressly considered and explicitly rejected by Congress (H. Con. Rep. No. 510, on H. R. 3020, 80th Cong., 1st Sess., pp. 58-59, 65).

A separate and additional basis for reversing the judgment of the Ohio courts exists. The Interstate Commerce Commission has comprehensively regulated the relationship between certificated carriers and the lessors of motor vehicle equipment (Ex parte M. C.—43, Lease and Interchange of Vehicles by Motor Carriers, 32 F. R. 760). Since the unregulated use of owner-driven equipment necessarily "tends to obstruct normal rate regulation" (*American Trucking Assoc. v. United States*, 344 U. S. 298, 306), the Commission's authority to regulate such rates cannot be seriously doubted. The fact that only partial rate regulation has been undertaken [M. C.—43, Sec. 207.4 (a) (5)] is immaterial to the question of state jurisdiction to regulate alleged restrictions upon such rates. *Napier v. Atlantic Coast Line R. Co.*, 272 U. S. 605, 613. By asserting jurisdiction to regulate alleged price fixing practices in interstate motor transportation, the Ohio courts have intruded into an area pre-empted by the Interstate Commerce Act.

ARGUMENT.

I. The National Labor Relations Act Has Pre-empted the Jurisdiction of State Courts to Pass Upon the Validity and to Enjoin the Application of the Substantive Provisions of the Collective Bargaining Agreement Here Involved.

The federal pre-emption problems involved in this case fall within two areas. One involves the National Labor Relations Act and the other involves the Interstate Commerce Act. First considered is the National Labor Relations Act.

A. State Jurisdiction Over Collective Bargaining Processes, Procedures and Activities Have Been Pre-empted.

Under the judgment below, the Union is "perpetually enjoined from giving force and effect to Section 32 of the contract" (R. 257). Whether this restraint, so boldly invading the domain of federally regulated collective bargaining, can stand against the Union's timely claim that primary, exclusive jurisdiction has been vested in the Labor Board is here for this Court's decision.

Experience teaches that a collective bargaining agreement is the product of a multi-stage program. As we shall demonstrate, this Court has held that each stage is to be measured by federal standards alone.[4] Typically, an organizational drive commences with the solicitation of non-union employees by the union. Since the purpose of the National Act "is to encourage collective bargaining, and to protect the 'full freedom' of workers in the selection

[4] Violence and mass picketing only have been consistently excepted from this rule. *United Auto Workers v. Russell*, 2 L. Ed. 2d 1030; *United Auto Workers v. Wisconsin Board*, 351 U. S. 266; *United Construction Workers v. Laburnum*, 347 U. S. 656; *Allen Bradley Local v. Wisconsin Board*, 315 U. S. 740.

of bargaining representatives," the states are precluded from establishing licensing requirements regulating the solicitation of employees by a union. *Hill v. Florida*, 325 U. S. 538, 541.

In addition, or alternatively, a union in quest of a collective bargaining agreement may engage in organizational picketing. Whether such picketing is to be sanctioned or prohibited, in the circumstances of the given case, is a question for the Labor Board and not the states. *Garner v. Teamsters Union*, 346 U. S. 485. Alleged violations of state "right to work" laws (*Electrical Workers Local 429 v. Farnsworth & Chambers Co.*, 353 U. S. 969) or "secondary boycott" prohibitions (*Pocatello Building & Construction Trades Council v. Elle*, 352 U. S. 884) do not require a different rule.

The Union may seek to establish its right to bargain for a collective agreement by participating in an election. But if the employer's business is one affecting interstate commerce, only the Labor Board has authority to conduct the election. *La Crosse Telephone Corp v. Wisconsin Board*, 336 U. S. 18; *Bethlehem Steel Co. v. New York Board*, 330 U. S. 767.

Some unions, by failing to file the required affidavits and reports, have deprived themselves of the right to invoke the Labor Board's election machinery. In the absence of voluntary recognition by the employer, these unions must depend upon a successful strike for recognition to establish their right to bargain for a contract. *United Mine Workers v. Arkansas Oak Flooring Co.*, 351 U. S. 62, holds that the National Act protects such strikes against state prohibition.

Upon attaining the status of bargaining agent, the union seeks to obtain a contract through negotiations with the employer. Should the employer fail to bargain in good

faith (*Guss v. Utah Labor Board*, 353 U. S. 1) or discharge a member of the bargaining committee because of his union activities (*Cf. Plankinton Packing Co. v. Wisconsin Board*, 338 U. S. 898), federal remedies alone are available.

If, as sometimes happens, a stalemate in bargaining is reached, the union may call a strike. "The objectives of such strikes may be judged under the standards provided by the federal Act alone, and judgment may be made only by the agencies designated by Congress in the statute to make them." *H. N. Thayer Co.*, 99 NLRB 1122, 1129, *enf'd* 213 F. 2d 748 (C. A. 1), *cert. denied*, 348 U. S. 883. For this reason, state jurisdiction to restrain the strike cannot be predicated on the claim that the objective, i. e., the contract which the union seeks, is in violation of state anti-trust statutes. *Weber v. Anheuser-Busch*, 348 U. S. 468.

Efforts to condition the right to strike upon compliance with state strike vote requirements met a similar fate in *United Auto Workers v. O'Brien*, 339 U. S. 454. The federally protected right to strike cannot be diluted merely because some violence occurred in the course of the strike (*Youngdahl v. Rainfair, Inc.*, 2 L. Ed. 2d 151); nor may the right to strike be denied because of the quasi-public character of the industry affected (*Amalgamated Association v. Wisconsin Board*, 340 U. S. 383).

Thus, the uniform course of decision in this Court demonstrates that the right to engage in certain activities at each of the many stages preceding the signing of a collective bargaining contract is to be judged solely by federal standards. From the day a union starts its organizational efforts through the last day of a strike for a contract, the lawfulness of the participants' acts is to be measured solely by a federal standard. We submit that state jurisdiction which been so long pre-empted cannot be

revitalized as the ink on the pages of the contract dries. Certainly the jurisdiction of a state to enjoin the contractual product of the collective bargaining process cannot exceed the jurisdiction of the state to enjoin the process itself. Since each step of the process is so related to the other and the completed product of the bargaining, the intrusion of the state at any stage must affect all other steps.

As we shall demonstrate, the comprehensive and detailed federal regulation of collective bargaining evidences a clear Congressional intention to exclude state jurisdiction to enjoin the enforcement of, or compliance with, collective bargaining agreements.

B. State Jurisdiction Over the Product, That Is the Contract, Resulting From Such Processes, Procedures and Activities Is Similarly Pre-empted.

An examination of the express provisions of the National Act demonstrates the correctness of Senator Taft's statement that Congress decided to "cover the whole subject" of collective bargaining. *Hearings before Senate Committee on Labor and Public Welfare on S. 55 and S. J. Res. 22,* 80th Cong., 1st Sess., p. 57.

In the National Act's declaration of policy, Congress has posited as a fact of industrial life that "the refusal by some employers to accept the procedure of collective bargaining leads to strikes and other forms of industrial strife or unrest. . . . Experience has proved that protection by law of the right of employees to . . . bargain collectively safeguards commerce from injury, . . . by encouraging practices fundamental to the free adjustment of industrial disputes arising out of differences as to wages, hours or other working conditions." The declaration concludes with the statement that:

"It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce . . . by encouraging the exercise by workers of full freedom of . . . designation of representatives of their own choosing, *for the purpose of negotiating the details and conditions of their employment*, or other mutual aid or protection." (Emphasis added.)

This declaration of national policy is implemented by numerous substantive provisions. Thus, Section 7 guarantees the right of employees "to bargain collectively through representatives of their own choosing, and to engage in . . . concerted activities for the purpose of collective bargaining." Section 8 (a) (5) imposes a duty upon an employer "to bargain collectively with the representatives of his employees." A corresponding duty is imposed upon unions by Section 8 (b) (3). Section 8 (d) describes in detail the requirements of good faith bargaining and requires "the execution of a written contract incorporating any agreement reached if requested by either party." Section 8 (d) also provides that notice of contract termination or modification be served prior to engaging in a strike or lockout and requires notification of state and federal mediation agencies. Additionally, Section 8 (d) requires the parties to continue "in full force and effect" the existing agreement for a period of sixty days following notice of termination or modification.

Section 9 (a) expressly provides that:

"Representatives designated or selected for purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representative of all the employees in such unit *for the purposes of collective bargaining in respect to rates of pay, wages, hours*

of employment, or other conditions of employment." (Emphasis added.)

This legislative policy resulted from a conscious and deliberate Congressional judgment. As Senator Taft pointed out in the course of the debates:

> "Basically, I believe that the committee feels, almost unanimously, that the solution of our labor problems must rest on a free economy and on free collective bargaining. The bill is certainly based upon the proposition." 93 Cong. Rec. 3951.

A few days later Senator Taft, speaking in opposition to piece-meal consideration of the proposed legislation, stated:

> "The bill is called an omnibus bill because all the provisions dealing with the subject are in one bill. However, the problems are all inter-related. As I stated the other day, *they all have to do with collective bargaining agreements* between employer and employee. That is the predominating subject in all the titles of the bill and throughout all of the provisions of the bill." 93 Cong. Rec. 4390. (Emphasis added.)

This view was reaffirmed by Senator Taft, speaking on the floor of the Senate following President Truman's veto of the Taft-Hartley Act:

> "Mr. President, we have drafted this bill and it is based on the theory of the Wagner Act, if you please. It is based on the theory that the solution of the labor problem in the United States is free, collective bargaining—a contract between one employer and all of his men acting as one man. *That is the theory of the Wagner Act, that they shall be free to make the contract they wish to make.*" 93 Cong. Rec. 7690. (Emphasis added.)

Congress in enacting the National Act knew full well that "when federal administration has made comprehensive regulations effectively governing the subject matter of the statute, . . . a state regulation in the field of the statute is invalid." *Bethlehem Steel Co. v. New York Labor Board*, 330 U. S. 767, 774. Hence, as an explicit exception, Congress provided for the use of state mediation and conciliation services in disputes affecting commerce. Secs. 8 (d) (3), 202 (c), and 203 (b). Similarly, Section 14 (b) was enacted to preserve state authority to prohibit "the execution or application of agreements requiring union membership as a condition of employment." Significantly, no similar exception, applicable to collective agreements thought to be in violation of state anti-trust statutes, is contained in the statute.[5]

Section 10 (a), which permits the Labor Board to cede to state agencies "jurisdiction over any cases in any industry (other than . . . transportation . . .)," is applicable only if the state law conforms to the National Act. Thus, "we find not only a general intent to pre-empt the field but also the proviso to Section 10 (a) with its inescapable implication of exclusiveness." *Guss v. Utah Labor Board*, 353 U. S. 1, 10. *See also: California v. Zook*, 336 U. S. 725, 732.

This Court recently had occasion, in *California v. Taylor*, 353 U. S. 553, to consider the question of state authority to abrogate the substantive provisions of collective bargaining agreements. Holding the provisions of a state civil service code, establishing terms and conditions of employment for employees of a state-owned railroad, to be in conflict with a federally protected collective bargaining agreement, this Court stated (353 U. S. at 560):

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[5] Efforts in Congress to subject collective bargaining agreements to the strictures of anti-trust legislation were defeated. This legislative history is discussed, *infra*, p. 43.

"If the Federal Act applies to the Belt Railroad, then the policy of the State must give way.

"'. . . a State may not prohibit the exercise of rights which the Federal Act protects. Thus, in *Hill v. Florida*, 325 U. S. 538, the State enjoined a labor union from functioning until it had complied with certain statutory requirements. The injunction was invalidated on the ground that the Wagner Act included a "federally established right to collective bargaining" with which the injunction conflicted.' *Weber v. Anheuser-Busch, Inc.*, 348 U. S. 468, 474, 99 L. ed. 546, 554, 75 S. Ct. 480.

"Under the Railway Labor Act, not only would the employees of the Belt Railroad have a federally protected right to bargain collectively with their employer, *but the terms of the collective-bargaining agreement that they have negotiated with the Belt Railroad would take precedence over conflicting provisions of the state civil service laws.*" (Emphasis added.)

California v. Taylor, 353 U. S. 553, was foreshadowed by *Local Union No. 89 v. American Tobacco Co.*, 348 U. S. 978, a *per curiam* decision reversing a state court judgment which declared void a collective bargaining contract clause protecting the right of employees of common carriers to refrain from crossing a picket line. *American Tobacco*, which involved the National Labor Relations Act, necessarily recognizes, as *Taylor* expressly holds, that the rule of pre-emption applies to the substantive terms of collective bargaining agreements.

Considering the history, provisions and purpose of the National Act, we submit that where, as here, the Labor Board reasonably could find that the subjects embodied in the challenged collective agreement fall within the matrix of compulsory or permissive bargaining, state

regulation must be foreclosed. In the sections which follow the applicability of this principle to the challenged contract provisions will be demonstrated.

C. Wide Discretion Is Vested in Collective Bargaining Agents With Respect to the Negotiation of Contract Clauses Dealing With Both Exceptional and Typical Employment Controversies.

In considering whether a union has a federally protected right to bargain over a given matter, the logical starting point is an inquiry into the nature and extent of the authority conferred by the National Act upon collective bargaining agents. *Ford Motor Co. v. Huffman*, 345 U. S. 330, 338, 339, recognizes that:

> "Inevitably differences arise in the manner and degree to which the terms of any negotiated agreement affect individual employees and classes of employees. The mere existence of such differences does not make them invalid. The complete satisfaction of all who are represented is hardly to be expected. A wide range of reasonableness must be allowed a statutory bargaining representative in serving the unit it represents, subject always to complete good faith and honesty of purpose in the exercise of its discretion.
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> • • •
>
> "The National Labor Relations Act, as amended, gives a bargaining representative not only wide responsibility but authority to meet that responsibility."

The federally protected right to bargain extends to " 'the exceptional as well as to the routine rates, rules, and working conditions.' *Order of R. Telegraphers v. Railway Exp. Agency, Inc.*, 321 U. S. 342, 347." *California v. Taylor*, 353 U. S. 553, 560.

In the course of its day to day business, the Labor Board plays an often times crucial role in determining

the substantive content of collective agreements. For example, employers have been required by the Labor Board to bargain over stock ownership (*Richfield Oil Corporation*, 110 NLRB 356, 359-361), the rent to be charged for company owned housing (*Lehigh Portland Cement Co.*, 101 NLRB 529, 536n, *enf'd*, 205 F. 2d 821 (CA-4) and the cost of meals in a company owned cafeteria (*Weyerhaeuser Timber Co.*, 87 NLRB 672, 675-676).[6] Similarly, pensions (*Inland Steel v. NLRB*, 170 F. 2d 247 (CA-7), *cert. denied*, 336 U. S. 960) and group insurance (*W. W. Cross & Co. v. NLRB*, 174 F. 2d 875 (CA-1)) are matters over which employers must bargain. On the other hand, employers may not insist upon negotiations over non-bargainable subjects such as strike vote procedures (*NLRB v. Wooster Division of Borg-Warner Corp.*, 2 L. Ed. 2d 823). The Labor Board may not, of course, "strike down contractual provisions in which there is no element of an unfair labor practice" (*Carpenters Local 1976 v. NLRB*, 2 L. Ed. 2d 1186, 1199), or write the contract for the parties (*NLRB v. American National Ins. Co.*, 343 U. S. 395).

When considered within this framework, the litigation growing out of organized labor's efforts to organize and bargain on behalf of owner-drivers takes on additional significance. Over fifteen years ago, in *Bakery & Pastry Drivers v. Wohl*, 315 U. S. 769, organized labor's right to peacefully picket in protest of the destructive effect which the owner-driver system has upon union standards was sustained. In the course of its opinion, this Court stated (315 U. S. at 771):

> "The union became alarmed at the aggressive inroads of this kind of competition upon the employment and living standards of its members. The trial court found that if employers with union contracts are

[6] These cases also demonstrate the error of the view below that an "indirect approach" to the question of wages is not within the contemplation of the National Act (R. 167-168).

forced to adopt the 'peddler' system, 'the wages, hours, working conditions, six-day week, etc., attained by the union after long years of struggle will be destroyed and lost.' "

Similarly, in *Milkwagon Drivers Union v. Lake Valley Farm Products*, 311 U. S. 91, 94-96, this Court had occasion to recognize the threat to union standards inherent in the owner-driver system. Rejecting the claim that the union's efforts to organize the owner-drivers and to obtain a conditional abandonment of the vendor system violated the Sherman Act, this Court stated (311 U. S. at 98):

"To say, as the Circuit Court of Appeals did, that the conflict here is not a good faith labor issue, and that, therefore, there is no 'labor dispute,' is to ignore the statutory definition of the term; *to say, further, that the conditional abandonment of the vendor system, under the circumstances, was an issue unrelated to labor's efforts to improve working conditions, is to shut one's eyes to the every-day elements of industrial strife.*" (Emphasis added.)

As these cases acknowledge, and as the record shows (R. 219-220), the owner-driver system is the product of employer efforts to avoid the payment of social security, unemployment benefits, workmen's compensation and union wages and conditions. Students of industrial relations accept this as a commonplace fact of labor history. Leiter, "The Teamsters Union," Bookman Associates, Inc., pp. 82-86, 148-154 (1957); Hill, "Teamsters and Transportation," American Council on Public Affairs, pp. 178-180 (1942).

It was within this historical, economic and legal setting that Article 32 came into existence. The next section discusses in detail the provisions of the collective agreement enjoined by the Ohio courts and the application of the legal principles which have been summarized above.

D. An Analysis of Article 32 Demonstrates That in All Respects It Falls Within the Area of Wages, Hours and Working Conditions, State Jurisdiction Over Which Is Pre-Empted by the National Act.

In two crucial respects the judgment here under review is fatally defective. First, the Ohio courts erroneously held that the subjects encompassed by Article 32 are not appropriate for bargaining under the National Act (R. 180, 256). Secondly, the Ohio courts erroneously held that the jurisdiction of the National Board to establish collective bargaining metes and bounds is neither exclusive nor primary (R. 246).

Article 32 of the present Central States agreement first appeared as Article 22 of the 1938 Central States agreement (R. 112-113). Thus, we are dealing with a collective bargaining contract clause which has been an integral part of the multi-state bargaining structure of the trucking industry for at least twenty years.

Although the opinions of the state courts evidence a singular preoccupation with Section 12 of Article 32, which establishes minimum lease rates, the judgment entered below declares that "Article 32 . . . is void and unenforcible" (R. 256). The injunctional order is divided into three separate paragraphs. First is a provision which "perpetually" restrains the Union "from entering into any agreements . . . or carrying out the . . . requirements . . . of any such agreement, which will require the alteration" of Revel Oliver's "existing lease or leasing agreement" (R. 256-257). Second is a provision restraining the Union "from entering into any . . . agreement or stipulation in the future, or the negotiation therefor, the . . . tendency of which is to . . . determine in any manner the rate to be charged for the use of" Revel Oliver's equipment (R. 257). Third is a provision "perpetually"

enjoining the Union "from giving force and effect to Section 32 of the contract . . . or any modification . . . thereof, the . . . tendency of which shall attempt to fix the rates" for the use of Revel Oliver's equipment (R. 257).

As we read this order, the first paragraph by restraining the enforcement of any contract provision which would affect Revel Oliver's leases, thereby enjoins Sections 4 and 5, Article 32 in their entirety; the second paragraph enjoins the minimum lease rate provisions contained in Section 12 of the Article; and the third paragraph enjoins comprehensively Article 32 and the minimum lease rate provisions of the Article. It is clear that the order's overlapping restraints completely implement the judgment repeatedly expressed in the state courts that Article 32 is "void" (R. 167, 181, 249, 256). Such a judgment necessarily is predicated upon the assumption that none of the provisions of Article 32 are appropriate for bargaining under the National Act. But as the decisions of this Court and of the Labor Board summarized herein clearly establish, each of the nineteen sections contained in Article 32 is well within the ambit of federally protected bargaining.

1. Article 32 applies only to owner-drivers.

Section 1 of Article 32 limits the applicability of the Article to "owner-operators" who hold no Interstate Commerce Commission certificates but who are "affiliated by lease" with certificated carriers (Ex. 1, pg. 38, R. 144). The term " 'owner-operator' . . . means owner-driver only, and nothing in [the] Article shall apply to any equipment leased except where owner is also employed as a driver." (Ex. 1, pg. 38, R. 144). This Section of Article 32 has been a part of the Central States agreement since 1941 (R. 114-115). Following an impasse in bargaining in 1941, the employers and Union agreed to request and abide by an in-

formal decision of the United States Attorney General concerning the Union's right to bargain for owner-operators. The employer's understanding of the Attorney General's decision was "that the equipment was this man's tools of the trade, and, therefore, that the unions had a right to see that his driving wages were protected. . . . That was the background of the note to designate what was an owner-operator" (R. 115).

Since Revel Oliver himself makes only one trip a month for A. C. E. and one trip about every eight months for Interstate (R. 71), most of the provisions of Article 32 apply to him only on those infrequent occasions when he is actually driving his own equipment. We emphasize that the contract has only limited application to Revel Oliver as a fleet owner, that is, as the owner and lessor of multiple pieces of equipment. As a fleet owner he may charge what he pleases for the use of such equipment and pay whatever charges the carrier may desire to impose upon him (R. 122).

The Ohio courts were either unable or unwilling to recognize this extremely narrow and limited application of Article 32 to Revel Oliver. As a consequence, they transformed Article 32 into a collective bargaining frankenstein which simply does not exist.

2. Wages, seniority and working conditions guaranteed.

Section 2 of Article 32 (Ex. 1, pg. 38, R. 144) provides that the owner-driver's "compensation for wages and working conditions" shall be in conformity with the agreement as it applies to all other employees. The Union's right to bargain over "wages and working conditions" is expressly protected by Sections 7 and 9 (a) of the National Act. Section 2 of the Article has been a part of the agreement since 1939 (R. 115).

Sections 2 and 19 (b) protect and define the seniority rights of owner-drivers (Ex. 1, pp. 39, 46, R. 144). The right to bargain over seniority is conferred by Section 9 (a) of the National Act. *Ford Motor Co. v. Huffman*, 345 U. S. 330, 337.[7]

3. Subterfuges prohibited.

Section 3 of Article 32 has been a part of the agreement since 1939 (R. 115). It provides that "Certificate and title to the equipment must be in the name of the actual owner" (Ex. 1, pg. 39, R. 144). This section is designed to meet the problem raised by fictitious transfers of title designed to avoid the conditions of the agreement (R. 116). *See also*: Leiter, "The Teamsters Union," Bookman Associates, Inc., pg. 84 (1957). Revel Oliver's equipment is registered in his name (R. 54-57); hence, he is not affected by the section.

Section 3 of Article 32 is merely a specific implementation of the general prohibitions in Section 16 "of any plan, scheme or device to circumvent or defeat the payment of wage scale provided in this agreement" (Ex. 1, pg. 43, R. 144). Similar safeguards against evasion are set forth in Section 14 (Ex. 1, pg. 42, R. 144) and Section 18 (Ex. 1, pg. 44, R. 144). Both of these Sections have been in the agreement since 1938 (R. 124). Certainly the right to bargain over wages and other conditions of employment contemplates the existence of a correlative right to negotiate provisions prohibiting evasion of the clauses establishing the wage scale and conditions of employment. The office of Sections 3, 14, 16 and 18 is to prevent such evasion (R. 114-115, 124).

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[7] Discriminatory seniority clauses have been held to violate section 8 (a) (3) of the National Act. *NLRB v. Teamsters, Local 745*, 228 F. 2d 702 (C. A. 5); *NLRB v. Teamsters Local 41*, 225 F. 2d 343 (C. A. 8).

4. Owner-driver must be employee of carrier—subcontracting prohibited.

Section 4 (Ex. 1, pg. 39, R. 144) has been a part of the agreement since 1939 (R. 116). Amendments were made in 1952 and 1955 (R. 116). The first part of Section 4 provides that "all . . . leased equipment shall be operated by an employee of the . . . carrier." Under Section 4, the carrier "reserves the right to control the manner" in which the owner-operator performs his services.

This Section is one of the few which directly affects Revel Oliver both as a driver of his own equipment and as a lessor of other equipment. Revel Oliver's lease with A. C. E. nominally establishes an independent contractor relationship and assumes that the drivers of Revel Oliver's equipment will be his employees (Ex. 4, R. 146-147). Since the Central States agreement is between the union and the carriers, the drivers of Revel Oliver's equipment become employees of the carrier only if Revel Oliver wishes to enter into or continue lease arrangements with common carriers covered by the Union agreement. Revel Oliver is required to be an employee only when he drives his own equipment in the service of a carrier.

Section 4 is the transportation industry's subcontracting clause. The historical function of a subcontracting clause is to prevent the employer from sending work, normally performed by his employees, outside the plant; or, in some cases, to prevent the employer from bringing independent contractors into the plant, thereby depriving his employees of the opportunity to perform the work. *See, e. g.*: ***Amalgamated Association v. Greyhound Corporation***, 231 F. 2d 585 (C. A. 5); Derber, "Collective Bargaining and Management Functions: An Empirical Study," 55 U. Ill. Bulletin No. 84, pp. 109, 111 (1958); Vol. 2, Bureau of National Affairs, "C. B. N. C.," Sec. 65:181-65:185.

Because subcontracting practices so "vitally affect . . . employees by progressively undermining their tenure of employment," the Labor Board has consistently held that such clauses are "properly included within the scope of bargaining." *Timken Roller Bearing Co.*, 70 NLRB 500, 518, *rev'd on other grounds*, 161 F. 2d 949 (C. A. 6); *Polar Water Company*, 120 NLRB No. 25. *Accord*: *The California Sportswear & Dress Assoc.*, F. T. C. Docket No. 6325, pp. 4-5.

The strike in *Weber v. Anheuser-Busch*, 348 U. S. 468, which the Missouri courts held to be in violation of the state anti-trust law, was called by the Union for the purpose of obtaining a subcontracting clause. In reversing the judgment of the Missouri court, this Court pointed out that "if the conduct is eventually found by the National Labor Relations Board to be *protected* by the Taft-Hartley Act, the state cannot be heard to say that it is enjoining that conduct for reasons other than those having to do with labor relations." 348 U. S. at 480.

Simply stated, the question is whether the Union, which represents a majority of A. C. E.'s and Interstate's acknowledged employee-truck drivers, has a right to bargain a contract clause insuring the employee status of all truck drivers in the service of the carrier. This question was affirmatively answered by the Labor Board in *Shamrock Dairy, Inc.*, 119 NLRB No. 134. There the Labor Board held that an employer unlawfully refused to bargain with the Union by unilaterally initiating an independent-contractor leasing mode of operation for the distribution of its products. The Board has also held, with court approval, that efforts of owner-operators to bring about a termination of a leasing system constitutes activity protected under Section 7 of the National Act. *Nu-Car Carriers, Inc.*, 88 NLRB 75, *enf'd* 189 F. 2d 756 (C. A. 3), *cert. denied*, 342 U. S. 919.

Thus, the decisions of the Labor Board, the Federal Trade Commission, the United States Courts of Appeal and of this Court uniformly recognize the legitimacy of labor's efforts to protect the integrity of the collective bargaining unit from the catastrophic consequences resulting from the unbridled use of independent contractors. The view of the Ohio courts that no "right of collective bargaining or any other right arising under the labor laws of the federal government" is involved (R. 246) flies in the face of the uniform course of federal decision; and, therefore, should be rejected.

Section 5 of the Article requires the carriers to "use their own available equipment . . . before hiring any extra equipment" (Ex. 1, pg. 39, R. 144). It has been a part of the agreement since 1939 (R. 116). This clause, like Section 4, is designed to insure full employment of the carrier's regular drivers. We submit that it, no less than the seniority clauses in *Ford Motor Co. v. Huffman*, 345 U. S. 330, 342 is well within "the reasonable bounds of relevancy."

5. Separate checks to insure full payment of driving wage.

Section 6 of Article 32 requires that separate "checks shall be issued by the . . . carriers for driver's wages and equipment rental" (Ex. 1, pg. 39, R. 144). Additional provisions designed to insure full and prompt payment by the carrier are also contained in the Section has been in the agreement since 1939 (R. 116).

This Section has no application whatsoever to Revel Oliver or his equipment except on those rare occasions when Revel Oliver himself drives in the service of the carrier. The obvious purpose for requiring separate checks is to provide a simple method of insuring compliance with the wage and minimum lease rate provisions of the agreement. Again, we point out that the Article is primarily

intended to cover the typical owner-operator who devotes a major portion of his time to the operation of the single piece of equipment which he owns. Although Revel Oliver drives only infrequently, his function when driving is no different from that of any other truck driver (R. 229). Hence, on those occasions when he undertakes to perform the normal duties of employees in the bargaining unit, the Union has a legitimate interest in his wage scale. For, if he receives substandard wages for the performance of such duties, it is only a question of time before the entire wage structure of the contract will be undermined.

6. Elimination of "company store" and other practices adversely affecting driver's wages.

Section 7 of Article 32 (Ex. 1, pp. 39-40, R. 144) was incorporated into the agreement to prevent certain carriers from "chiseling on the owner-operators by extra charge-backs" (R. 116-117). Again, this clause would pertain to Revel Oliver only on those infrequent occasions when he is actually driving his own equipment in the service of the carrier whose employees the Union represents.

Sections 8 and 11 of the Article (Ex. 1, pg. 40, R. 144) prohibit the carrier from requiring owner-operators to purchase supplies from the carrier and prohibit the carrier from charging "interest . . . on earned money advanced prior to the regular pay day." These sections have been in the agreement since 1939 (R. 118-119). They are designed to abolish the "company store arrangement" (R. 118). Similarly, Section 17 requires the carrier to pay the "'driver-owner-operator' . . . the fair true value of the equipment" if the carrier requires the owner-driver "to sell his equipment to the . . . carrier, directly or indirectly" (Ex. 1, pg. 43, R. 144).

Sections 8 and 11, like most of the other provisions in Article 32, apply to Revel Oliver only when he is actually

driving equipment which he owns. They have no possible application to any other driver of leased equipment which Revel Oliver owns. Revel Oliver's leases do not require him to sell his equipment to the carrier. Hence, Section 17 has no application to him.

Section 9 (Ex. 1, pg. 40, R. 144), which has been a part of the agreement since 1939 (R. 118), prohibits the carrier from making any deduction "pertaining to equipment operation." Section 10, requiring the carriers to pay social security, workmen's compensation, liability insurance, fees and taxes, has been in existence since 1939 with additions made in 1955 (R. 118-119). The manifest purpose of these requirements, which apply to Revel Oliver *only* when he is driving his own equipment, is to protect the "driver's wage scale" (R. 119).

7. The minimum lease rates are solely to insure the payment of negotiated wage rates for services as a driver employee.

The opinions of the Ohio courts, while generally condemning Article 32 (R. 167, 171, 248, 249) single out only Section 12 (R. 167-168, 248) of the Article (Ex. 1, pp. 41-42, R. 144). Because of this, we believe that a detailed analysis of the history, purpose and application of the Section is in order.

Section 12, as it now appears, is an elaboration of Article 22 which was included in the 1939 Central States agreement (R. 113-114, 120). Its principal purpose is to establish minimum rates for leased equipment "owned and driven by the owner-driver" (Ex. 1, pg. 41, R. 144). As the Section itself plainly states:

> "The minimum rates set forth above result from the joint determination of the parties that such rates represent only the actual cost of operating such equipment. The parties have not attempted to nego-

tiate a profit for the owner-driver" (Ex. 1, pg. 42, R. 144).

The record amply supports this contractual declaration of purpose. Extensive and separate cost studies by the employers and the union preceded the establishment of the minimum rates (R. 113, 120, 215-216). The amortized cost of the equipment, gas, oil, insurance, tires and many other factors were taken into consideration (R. 121, 215-216). It is undisputed that the minimum lease rates do not exceed the actual cost of operating the equipment (R. 113-114, 121, 129, 215-216). An executive of one of the nation's largest truck lines (R. 104-105) who is also chairman of several major employer negotiating committees (R. 109-110) testified that his company's equipment expenses greatly exceed the minimums specified in Section 12 (R. 121). Trucking companies uniformly pay a rate in excess of the minimums provided in the agreement (R. 122, 216). However, this is not the result of any negotiations with the Union (R. 122).

The minimum lease rate provisions have no application to Revel Oliver's equipment unless he is actually operating the equipment as a driver in the service of the carrier. These minimum lease rates were and are designed to prevent the carrier from requiring the owner-operator to operate his equipment at a lease rate below the actual cost of operation, thereby causing a reduction of his negotiated wages as a driver (R. 114-115, 138-139, 219).

For example, under Article 25 of the agreement, all drivers operating tandem axle units receive, as wages, 8.32¢ per mile on all runs (Ex. 1, pg. 28, R. 144). Article 32, Section 12 (b) guarantees to an owner-driver an additional, minimum lease rate of 10¢ per mile for a tandem axle tractor which he owns and drives. Because the minimum lease rate of 10¢ per mile represents the actual cost of operation, a lease rate of 8¢ per mile would result

in an operating loss of 2¢ per mile. Accordingly, the owner-driver's wage as a driver would be reduced by 2¢ per mile. In the example just given, the owner-driver's *real* driving wage would be 6.32¢ per mile rather than the established wage rate of 8.32¢ per mile. In other words, the owner-driver would have to take 2¢ per mile out of his wage pocket and put it in his equipment operations pocket to make up the operating deficit. *To prevent such practices which necessarily result in a reduction of wages, Article 32, Section 12 was included in the Central States agreement* (R. 113-115, 123, 138-139).

Stated another way, even if the minimum lease rate or the actual rate negotiated by an owner-driver for the use of his equipment were in excess of his actual costs, the Union would still have an interest in such rate if it were modified to effect the wage rate. For if the Union negotiated a ¼¢ per mile increase in the wage rate, such increase could be wiped out by the carrier reducing the lease rate by ¼¢ per mile.

In light of the undisputed history, purpose and application of Article 32, Section 12, we submit that it falls well within the protection of Sections 7 and 9 (a) of the National Act.

8. Conflicting, individual agreements eliminated.

Section 15 of the Article has been in effect since 1941 (R. 124) and is applicable only to owner-drivers (Ex. 1, pgs. 42-43, R. 144). This section abrogates individual arrangements between owner-operators and carriers which are in conflict with the collective bargaining agreement. It is merely a contractual implementation of this Court's declaration that "individual contracts . . . may not . . . be used . . . to limit or condition the terms of the collective agreement." *J. I. Case Co. v. NLRB*, 321 U. S. 332 337.

9. Grievance procedure.

Section 19, the final provision of the Article, guarantees to owner-operators the right to invoke the grievance procedure of the agreement (Ex. 1, pgs. 44-45, R. 144). No citation of authority is required to establish the importance of grievance procedures to the collective bargaining process.

Serious students of labor relations in the motor transportation industry have uniformly recognized that the most troublesome problems are those involving the variously styled "owner-driver," "owner-operator," or "gypsy" truck driver. Carriers in the past have used every conceivable stratagem to create, foster and support owner-operators. The position of A. C. E. and Interstate, nominal co-defendants with the Union, throughout these proceedings cogently demonstrates that at least some carriers are anxious to again initiate the evasive practices prevalent in years past.

We respectfully submit that Article 32 embodies a reasonable, carefully limited contractual solution to the most difficult single labor problem in the motor transportation industry.

E. Actual and Potential Conflicts Arise as a Consequence of the Ohio Courts' Judgment.

1. Conflicts with respect to the carriers' duty to bargain.

Many cases, some decided and others pending, spotlight the conflicts between federal and state authority which arise as a consequence of the judgment below. *Amalgamated Association v. Wisconsin Board*, 340 U. S. 383, invalidated a Wisconsin statute which substituted compulsory arbitration for collective bargaining in public

utilities. Pointing to the fatal conflicts between federal and state authority created by the state legislation, this Court observed that union demands concerning shift assignments had been held to be non-arbitrable under the Wisconsin statute while "similar problems have been held to be appropriate subjects for collective bargaining under the federal Act." 340 U. S. at 398-399.

In *Eppinger & Russell Co.*, 56 NLRB 1259, the Labor Board held the employer guilty of a refusal to bargain notwithstanding his claim that the union had failed to comply with state licensing laws. "The Board properly rejected the employer's contention holding that Congress did not intend to subject the 'full freedom' of employees to the eroding process of 'varied and perhaps conflicting provisions of state enactments.' " *Hill v. Florida*, 325 U. S. 538, 542. A similar conflict was presented in *The Grace Company*, 84 NLRB 435, *remanded*, 184 F. 2d 126, 130 (C. A. 8), *enforcement denied on other grounds*, 189 F. 2d 258 (C. A. 8), when the employer sought to defend against a refusal-to-bargain charge by relying upon a state court order restraining him from violating his contract with another union. Rejecting this defense, the Labor Board stated (84 NLRB at 436):

> "[The employer's] duty to bargain with the certified representative of its employees, imposed by federal statute, was paramount to any conflicting obligation which the state court order might have imposed upon the respondent [company]."

See also: Pacific Box Co., 50 NLRB 720, 723;
Mason Mfg. Co., 15 NLRB 295, 314-315, *enf'd* 126 F. 2d 810 (C. A. 9);
National Electric Products Corp., 3 NLRB 475, 503.

The judgment below holds Article 32 to be void because it "infringed upon" the individual contracts between

Revel Oliver and the carriers (R. 245), thereby bringing the Article into conflict with the state's anti-trust laws (R. 248). Thus, in this case, as in *Williams Mfg. Co. v. Shoe Workers, Local 119*, 1 Labor Cases 278 (Ohio Ct. Comm. Pleas), the Ohio courts held that the terms of individual contracts superseded the terms of a collective bargaining agreement. The Shoe Workers dispute with the Williams Company, subsequently, was considered by the Labor Board which held:

> "[The Company's] sole purpose in procuring and presenting the contracts was, through the guise of spurious individual bargaining, to foreclose its employees from exercising the right to self-organization and collective bargaining guaranteed to them under the Act and to impede the right to strike expressly preserved by the Act.
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> * * * * * * *
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> "The respondent [employer] cannot, by reliance on the [state] court decision, seek to immunize itself from liability under the Act and to disable its employees from enforcing the rights guaranteed to them." *Williams Mfg. Co., Portsmouth, Ohio*, 6 NLRB 135, 143, 145.

This long standing conflict between labor's right to collective bargaining and employer efforts to maintain individual contract relationships is involved in a pending unfair labor practice proceeding. *Lyon Van & Storage Co.*, Case No. 21-CA-3064. The General Counsel has issued a complaint against the company because it refused to bargain concerning lease agreements with its owner-drivers who have been determined to be employees. It is the General Counsel's position in the case that the company has a duty to bargain with the union over the terms of the individual leases since they establish the wages and working conditions of the owner-drivers. See *J. I. Case Co. v. NLRB*, 321 U. S. 332, 337.

While the eventual result of pending litigation is at best problematical, the case affords an apt illustration of the potential conflicts flowing from the judgment below, as well as a typical example of Labor Board's jurisdiction in this area.

Additional conflicts created by the judgment below are not difficult to envision. But those cited above suffice to provide compelling support for Professor Cox's conclusion that "if a circle must be drawn limiting the subjects which a union may seek to cover by a collective agreement, the task is exclusively one for the federal government." Cox, *Federalism in the Law of Labor Relations*, 67 Harv. L. Rev. 1297, 1329 (1954).

2. Conflicts with respect to the employee status of owner-drivers.

The potential conflicts between federal and state authority are compounded by the provisions of the judgment below unqualifiedly declaring that Revel Oliver "is an independent contractor" (R. 256). In construing this judgment, consideration should be given to the opinion of the Court of Appeals and the opinion of the Common Pleas court which was expressly adopted by the Court of Appeals. *Great Lakes Dredge & Dock Co. v. Huffman*, 319 U. S. 293, 295.

The Common Pleas court concluded that "under the leases" Revel Oliver was an independent contractor (R. 173). Similarly, the Court of Appeals held Revel Oliver "an independent contractor, *to the extent that he leases motor vehicles to carriers*, rather than an employee under the federal statute" (R. 246). (Emphasis added.) Whether the Ohio courts considered Revel Oliver, when acting as a driver, to be an "employee" is not clear. Nor is it clear whether a finding of "employee" status would have affected the judgment of the Ohio courts; for the

Common Pleas court commented that his "status as to being an employee or independent contractor in no way conditions his right to prevail" (R. 173). Apparently both Ohio courts considered his status material to the question of whether a federal "remedy" was available.[8]

This much is certain: The Ohio courts' finding of independent contractor status was based upon Revel Oliver's lease agreements and the fact of equipment ownership. Since the opinions below failed to consider the circumstances under which Revel Oliver performs services as a driver, the Ohio courts failed to recognize Revel Oliver's dual status which the Labor Board would have considered. The Labor Board reasonably could find, as it did in *Hoster Supply Company*, 109 NLRB 466, 470, that:

> "[The] driver-owners stand in a dual relationship to the Employer: as lessors of trucks they are independent-business men, but as drivers of those trucks they are no different than any other driver-employees. Accordingly, we find that in their capacity of drivers, the lessors are employees of the Employer."

Whether the Labor Board would hold that Revel Oliver, as a driver, is an "employee" within the meaning of the National Act need not be determined here. "Resolving that question, like determining whether unfair labor practices have been committed, 'belongs to the usual administrative routine' of the Board. *Gray v. Powell*, 314 U. S. 402, 411." *NLRB v. Hearst Publications*, 322 U. S. 111, 130. Ample evidence from which the Labor Board could find "employee" status, as a driver, is to be found in the record in this case (R. 60, 81, 84, 85, 226-228).

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[8] The reasoning of the Ohio courts which would limit the preemption rule to cases in which a federal remedy exists (R. 172, 181, 246) is in direct conflict with *Amalgamated Meat Cutters v. Fairlawn Meats*, 353 U. S. 20, and therefore must be rejected.

But more important than these evidentiary indicia of employee status, as a driver, is the fact that under Article 32 the carrier "expressly reserves the right to control the manner, means and details of, and by which, the owner-operator performs his services, as well as the ends to be accomplished" (Ex. 1, pg. 39, R. 144). But for the injunctions issued in this case, the Article would have been enforced by the Union (R. 103) and implemented by the carriers (R. 19).[9]

Since the Central States contract, like the statute involved in *G. L. Allen Company,* 117 NLRB 1055, 1056n, "applies the same 'right of control' test that is applied by the Board," a finding "that all those who drive vehicles for the employer are its employees" probably will be made by the Labor Board when the question is presented to it.

When this question is presented to the Labor Board, it will not "be rigidly bound by common law or local statutory conceptions." *R. A. Blount,* 37 NLRB 662, 666, enf'd 131 F. 2d 585 (C. A. 8), *cert. denied* 318 U. S. 791. *Accord: Stockholders Publishing Co., Inc.,* 28 NLRB 1006, 1024. The leases to which the Ohio courts accorded controlling weight will constitute merely one of many elements weighed by the Labor Board. Employee status often has been found "notwithstanding the language of the contract." *Orange Crush of P. R., Inc.,* 118 NLRB 217, 219. *See also, e. g.: Toledo Scale Company,* 82 NLRB 826, 828.

A similar conflict arises as a consequence of the Ohio courts' stress upon Revel Oliver's ownership of motor vehicle equipment. Both Ohio courts ignored the fact that

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[9] A temporary injunction issued by an Ohio court, in prior independent proceeding prevented enforcement of Article 32 from 1952 through 1955 (R. 229). That order was dissolved shortly before the first injunction in this case was issued. The temporary order in this case became effective shortly after the 1955 Central States agreement was signed (R. 229).

Revel Oliver is required to use his equipment exclusively for the lessee-carrier (R. 56). In view of this circumstance, the Labor Board probably would hold that "the fact of ownership loses its significance." *NLRB v. Nu-Car Carriers, Inc.*, 189 F. 2d 756, 759 (C. A. 3), *cert. denied*, 342 U. S. 919. *Accord: National Van Lines*, 117 NLRB 1213, 1219. Furthermore the Common Pleas court rejected the view that "the tractor-trailer here may be compared to the tools which an employee owns and uses in the work." However, the Labor Board stated in *Field Packing Co.*, 48 NLRB 850, 852, *enf'd* 12 LRRM 130 (C. A. 6) that:

> "The ownership of the truck is merely an incident of the employment of the trucker; it does not establish him as an independent entrepreneur engaged in the transportation business. Such ownership is similar to ownership by any employee of the tools requisite to the performance of his duties, and does not of necessity carry with it the responsibility of managing and maintaining a business."

In short, while the Ohio courts predicated their finding of "independent contractor" status upon Revel Oliver's ownership of motor vehicle equipment and the lease agreements covering the equipment, "the Board has held that the determination of whether an individual is an independent contractor depends on the facts of each particular case and no one factor is determinative." *Hoster Supply Company*, 109 NLRB 466, 470.

The "employee" *vis a vis* "independent contractor" status of owner-drivers typically poses close questions for the Labor Board. Compare *National Van Lines*, 117 NLRB 1213; *New Orleans Furniture Mfg. Co.*, 115 NLRB 1494, and *Hughes Transportation, Inc.*, 109 NLRB 458, in which owner drivers were held to be "employees" with *Malone Freight Lines, Inc.*, 107 NLRB 501, and *Oklahoma Trailer Convoy, Inc.*, 99 NLRB 1019, holding owner-drivers

to be independent contractors. Occasionally, even the Labor Board is unable to make up its mind on this question. *Eldon Miller, Inc.*, 103 NLRB 1627 and 107 NLRB 557.

"To experienced lawyers it is common place that the outcome of a lawsuit—and hence the vindication of legal rights—depends more often on how the fact finder appraises the facts than on a disputed construction of a statute or interpretation of a line of precedents." *Speiser v. Randall*, 2 L. Ed. 2d 1460, 1469. It is therefore imperative that the Labor Board's jurisdiction to determine the difficult factual question of "employee" status, under the National Act, be primary and exclusive. Otherwise, "persons who might be 'employees' in one state would be 'independent contractors' in another." *NLRB v. Hearst Publications*, 322 U. S. 111, 123.

Recognizing exclusive jurisdiction in the Labor Board to determine this question, the court in *Aetna Freight Lines v. Clayton*, 228 F. 2d 385, 389 (C. A. 2), *cert. denied* 351 U. S. 950, stated:

> "It may be true that the legal consequences flowing from this picketing depend upon whether plaintiff's operators were employees or independent contractors. But this basic question, which surely is far from frivolous, is one of the type which an administrative agency, set up for the adjustment of these delicate relationships, ought primarily to consider. Otherwise, control by the Board is limited and postponed in point of time."

As a consequence of the injunction in this case, the Union was required to consider the drivers of leased equipment to be employees of the fleet-owner, lessor, rather than employees of the carriers as provided in the contract (Exs. 1, 2 and 3, R. 233-236). This in turn led to strikes and picketing at the carrier's premises. In a subsequent

unfair labor practice proceeding the Labor Board held that, since the drivers of the leased equipment were not employees of the carrier, the picketing was secondary rather than primary and violated Section 8 (b) (4) (A) of the National Act. *A. C. E. Transportation Co., Inc.*, 120 NLRB No. 150, *appeal pending* C. A. D. C. No. 14558. Clearly, if the state court injunction had not restrained the application of Section 4 of Article 32, the striking drivers would have been employees of the carrier, and their strike would have been primary and lawful. Moreover, but for the injunction, the strike would have been unnecessary.

The conflicts discussed above represent only the more obvious clashes between federal and state power necessarily flowing from the judgment below; and "obvious conflict, actual or potential, leads to easy exclusion of state action." *Weber v. Anheuser-Busch*, 348 U. S. 468, 480.

3. Conflicts with respect to collective bargaining units.

Article 32 of the Central States Agreement is an integral part of an area-wide contract in effect with motor carrier employers in Ohio and eleven other midwestern states. The Agreement covers between 3,000 and 3,500 employers and from 45,000 to 50,000 truck drivers.

The legislative history of the National Act reveals a genuine Congressional concern over any legislation which would affect multi-employer bargaining. The approach embodied in the Bill passed by the House of Representatives was to flatly outlaw such bargaining. H. R. 3020, 80th Cong., 1st Sess., Secs. 2 (16), 12 (a) (3) (A) and 12 (a) (4). Because these provisions "involved the matter of industry-wide bargaining" they were "omitted from the conference agreement." H. Con. Rep. No. 510, On H. R. 3020, 80th Cong., 1st Sess., pg. 59. With respect to

the efforts to outlaw multi-employer bargaining, this Court in *NLRB v. Truck Drivers Union*, 353 U. S. 87, 95, stated:

> "The debates over the proposals [to outlaw multi-employer bargaining] demonstrate that Congress refused to interfere with such bargaining because there was cogent evidence that in many industries the multi-employer bargaining basis was a vital factor in the effectuation of the national policy of promoting labor peace through strengthened collective bargaining."

Certainly, "multi-employer bargaining" in the trucking industry is "a vital factor in the effectuation of the national policy of promoting labor peace." *Cf.* Sec. 10 (a) of the National Act. *See also:* Leiter, "The Teamsters Union," Bookman Associates, Inc., pp. 171-177, 194 (1957); Gillingham, "The Teamsters Union on the West Coast," University of California Institute of Industrial Relations, pp. 11-13 (1956).[10] Thus, in *Motor Cargo, Inc.*, 108 NLRB 716, the Labor Board held that the same Central States Agreement involved in this case effectively establishes a multi-employer, multi-state collective bargaining unit. For this reason the Labor Board held that a "single-employer unit . . . is not appropriate for purposes of collective bargaining" and dismissed a representation petition filed by certain owner-drivers employed by an Ohio carrier. 108 NLRB at 717.

In eleven of the twelve states covered by the collective bargaining unit established by the Central States agreement, Article 32 remains in full force and effect. Within these eleven states are 40,000 employees and 3,000 carriers, many of whom are in direct competition with Ohio carriers. Only in Ohio, because of Ohio's interpretation and

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[10] "Contracts covering approximately 180,000 local and long-distance truck drivers in 22 midwestern and southern states were signed during January, [1955], by 4 major employer groups and the AFL Teamsters." 78 Mon. L. Rev. 355 (1955).

application of federal law as measured by state standards, does the Article fall.

If state courts are permitted to measure multi-state agreements against local standards, the head-on clashes of federal and state authority, discussed above, will be immeasurably complicated by conflicts among the states *inter se*. The institution of multi-employer bargaining, which has received Congressional approval, cannot survive in such a judicial and legislative morass.

F. Application of Anti-Trust Laws to Contracts Bearing a Direct and Reasonable Relationship to Wages, Hours and Working Conditions Was Expressly Rejected by Congress.

Although *Weber v. Anheuser-Busch*, 348 U. S. 468, authoritatively establishes the proposition that state anti-trust legislation cannot be applied in areas regulated by the National Act, a brief review of the legislative efforts to subject collective bargaining agreements to the anti-trust laws will further demonstrate the error of the judgment below. The House version of the National Act would have applied the anti-trust laws to any collective bargaining agreement containing subjects which were not "legitimate objects of a labor organization." H. R. 3020, 80th Cong., 1st Sess., Sec. 301 (a). Section 301 (b) of the House Bill provided in part:

> "That it shall not be within the legitimate objects of labor organizations . . . to make any contract . . . if one of the purposes or a necessary effect of such contract . . . is to . . . impose restrictions or conditions, upon the purchase, sale, or use of any . . . machine or equipment."

The question of whether the anti-trust laws should be superimposed upon processes and details of collective bar-

gaining was extensively discussed in the debates (93 Cong. Rec. 1900, 3536, 7495, A895, A2010) and committee reports (House Report No. 245 on H. R. 3020, 80th Cong., 1st Sess., pp. 45-46, 107-108, 114; Senate Report No. 105 on S. 1126, 80th Cong., 1st Sess., pp. 2, 55-56). Following this deliberate study, the Conference Committee rejected the anti-trust provisions of the House Bill (H. Con. Rep. No. 510, on H. R. 3020, 80th Cong., 1st Sess., pp. 58-59, 65). Certainly, state courts should not be permitted to impose upon the collective bargaining process a regulatory scheme expressly rejected by Congress. *Garner v. Teamsters Union*, 346 U. S. 485, 499-500.

Although organized labor cannot claim total anti-trust immunity under the National Act, its immunity is lost only by joining with an independently existing conspiracy among employers. *Allen-Bradley Co. v. Local Union No. 3*, 325 U. S. 797, 809; *Hunt v. Crumboch*, 325 U. S. 821, 824; *New Broadcasting Co. v. Kehoe*, 94 F. Supp. 113, 115 (S. D. N. Y.). But where, as here, the Union's contract is reasonably related to wages, hours and working conditions and was obtained only after extended negotiations (R. 115) and strikes (R. 214-215), federal decision uniformly recognizes anti-trust immunity. *United States v. Hutcheson*, 312 U. S. 219, 232-233; *Milk Wagon Drivers Union v. Lake Valley Farm Products*, 311 U. S. 91, 98; *Meier & Pohlmann Furniture Co. v. Gibbons*, 233 F. 2d 296 (C. A. 8); *cert. denied*, 352 U. S. 879; *Schatte v. International Alliance*, 182 F. 2d 158 (C. A. 9), *cert. denied*, 340 U. S. 827; *East Texas Motor Freight Lines v. Teamsters*, 163 F. 2d 10 (C. A. 5); *California Sportswear & Dress Association*, F. T. C. Docket No. 6325, pp. 2-6.

Hinton v. Columbia River Packers, 315 U. S. 143 is not to the contrary for in that case there was a complete absence of a bona-fide collective bargaining history, a total absence of any indicia of an employer-employee relation-

ship, and a complete lack of genuinely conflicting interest between the captain and crew. Furthermore, in *Hinton* there was actual control of prices to the consumer. In this case the converse is true with respect to each of these factors. Again, we stress that the minimum lease rates contained in section 12 of Article 32 apply only to owner-drivers and are solely designed to protect the driving wage. For this reason, the minimum lease rates have identically the same effect upon the price of transportation that the wage scale has—no more and no less. "An elimination of price competition based on differences in labor standards is the objective of any national labor organization, but this effect on competition is not considered to be a violation of the anti-trust laws." *Apex Hosiery Co. v. Leader*, 310 U. S. 469, 503-504.

Moreover, in both *Hinton* and *Allen Bradley* the problem was one of accommodating divergent federal policies having simultaneous application; no constitutional question arising under the Supremacy Clause was involved in either case. Unlike *Hinton* and *Allen Bradley*, this case presents a state judgment squarely in conflict with the Supremacy Clause of the federal Constitution. For, here, the Ohio courts applied the sanctions of state anti-trust legislation to a collective bargaining agreement, the terms of which are clearly within the protection of Sections 7 and 9 (a) of the National Act. This denial of federally protected labor rights should not be permitted to stand.

II. The Comprehensive and Detailed Regulations Governing the Use of Leased Motor Vehicle Equipment Promulgated by the Interstate Commerce Commission Preclude Supplemental or Conflicting State Regulation.

The Ohio courts have declared that the state anti-trust laws accord affirmative protection to Revel Oliver's lease agreements with A. C. E. and Interstate. A timely claim

by the Union that the Interstate Commerce Act, and the regulations established pursuant thereto, precluded an exercise of state jurisdiction (R. 22-23) was rejected (R. 246). The correctness of that determination is also here for review.

A. Ohio Has Accorded Protection to Leases Containing Federally Outlawed Provisions.

Of direct and immediate application to this case are the terms of Ex parte M. C.-43, Lease and Interchange of Vehicles by Motor Carriers, 22 F. R. 760. This regulation specifies, in detail, the relationship which must exist between certificated motor carriers and the lessors of motor vehicle equipment. In the opinion sustaining the Commission's authority to establish M. C.-43, the most important provisions of the order are summarized (*American Trucking Assoc. v. United States*, 344 U. S. 298, 301):

> "[They] principally require carrier inspection; when the equipment is leased, control for a minimum of thirty days and a method of compensation other than division of revenues between lessor and lessee; and in the case of use of another carrier's equipment, authorization to the exchange point and actual transfer of control."

The regulation was promulgated to deal with the many "satellite practices" concomitant with the use of leased equipment. 344 U. S. at 304. Equipment inspection, supervision of rest periods and medical certificates are often difficult to police if the carrier uses owner-operators on a trip lease basis. 344 U. S. at 305. "And the owner-operator himself is called upon to push himself and his truck because of the economic impact of time spent off the road and investment in repairs on his slim profit margin." *Ibid.*

As this Court has frequently held, a comprehensive, detailed administrative regulatory program such as that embodied in the Interstate Commerce Act and M. C.-43, presents the strongest possible evidence of a congressional intention to exclude supplemental or contradictory state legislation. *Benanti v. United States*, 2 L. Ed. 126, 132-133; *Pennsylvania v. Nelson*, 350 U. S. 497, 504, 509; *Napier v. Atlantic Coast Line R. Co.*, 272 U. S. 605, 612-613.

A brief comparison of Revel Oliver's leases—which come here bearing the imprimatur of the State of Ohio—with the requirements of M. C.-43 underscores the need for exclusion of state authority to regulate such leasing relationships. Section 207.4 (a) (3) of M. C.-43 requires that the lease shall "specify the period for which it applies, which shall be not less than 30 days." Neither Revel Oliver's lease with A. C. E. (R. 148) nor his lease with Interstate (R. 150) complies with this federal requirement.

Revel Oliver's lease with A. C. E. fails to provide that exclusive possession and control over the equipment shall be vested in the carrier for the duration of the lease; and is, therefore, in violation of Section 207.4 (a) (4) of M. C.-43. His lease with Interstate provides for compensation based upon a division of revenues (R. 150) in direct violation of Section 207.4 (a) (5) of M. C.-43.

Notwithstanding these obvious conflicts with M. C.-43, the Ohio courts accorded affirmative protection to Revel Oliver's leases. As a consequence, fatal conflict exists; for here the state has approved and protected federally outlawed practices. *Benanti v. United States*, 2 L. Ed. 2d 126, 133; *Garner v. Teamsters Union*, 346 U. S. 485, 499-500.

B. State Authority to Regulate Alleged Restraints Upon Lease Rates Has Been Pre-empted by Interstate Commerce Act.

Secondly, it must be remembered that "The Interstate Commerce Act is one of the most comprehensive regulatory plans that Congress has ever undertaken." *United States v. Baltimore & Ohio R. Co.*, 333 U. S. 169, 175. Congress anticipated the possible impact of anti-trust legislation upon this program; and, therefore, empowered the Interstate Commerce Commission to permit certain practices which might otherwise violate the Sherman Act. *See*: 49 U. S. C. Sec. 5 (b) (9). The validity of this exception has been sustained. *McLean Trucking Co. v. United States*, 321 U. S. 67.

If one were to agree, for purposes of argument only, with the view in the courts below that the Central States "contract may be succinctly said to be one which fixes the price to be charged for the use . . . of trucks . . . owned by individual persons who lease their equipment to the carriers" (R. 248), the total lack of state jurisdiction is even more apparent. That the Commission's jurisdiction over rates, fares and charges in the field of interstate motor transportation is exclusive and primary cannot be doubted. 49 U. S. C. Sec. 316 (a)-(j). *Cf. Castle v. Hayes Freight Lines, Inc.*, 348 U. S. 61, 63-65. This primary jurisdiction necessarily includes the exclusive authority to regulate the rates for equipment leased to certificated carriers, for the "Use of exempt equipment by authorized carriers also tends to obstruct normal rate regulation." *American Trucking Assoc. v. United States*, 344 U. S. 298, 306. The fact that the Commission has undertaken only a partial regulation of such lease rates [M. C.-43, Sec. 207.4 (a) (5)], "is not of legal significance. . . . The fact that the Commission has not seen fit to exercise its authority to the full extent conferred, has no bearing

upon the construction of the Act delegating the power. . . . Because the standard set by the Commission must prevail, requirements by the states are precluded, however commendable or however different their purpose. . . . If the protection now afforded by the Commission's rules is deemed inadequate, application for relief must be made to it. The Commission's power is ample." *Napier v. Atlantic Coast Line R. Co.*, 272 U. S. 605, 613.

Thus, independently of the fact that the judgment below has denied rights protected under the National Labor Relations Act, a separate and additional reason for reversing that judgment exists. By protecting lease arrangements patently in violation of M. C.-43, and by asserting jurisdiction to regulate alleged price fixing practices in interstate motor transportation, the Ohio courts have directly invaded an area reserved exclusively to the Interstate Commerce Commission.

CONCLUSION.

Here, as in *California v. Taylor*, 353 U. S. 553, and *Local Union No. 89 v. American Tobacco Co.*, 348 U. S. 978, a state judgment abrogating the substantive terms of a collective agreement is before this Court. Both *Taylor* and *American Tobacco* apply the familiar rules of federal pre-emption to bar such state action. Certainly, the same result should be reached in this case, for the judgment below, in addition to creating a host of actual and potential conflicts between state and federal authority, denies to the Union federally protected labor rights.

A separate and distinct basis for reversal also exists. The Ohio courts by asserting jurisdiction to regulate alleged price fixing practices, the existence of which is most emphatically denied, in the interstate trucking industry have entered into an area reserved exclusively to the Interstate Commerce Commission.

We therefore respectfully request this Court to reverse the judgment below.

Respectfully submitted,

DAVID PREVIANT,
511 Warner Theatre Building,
Milwaukee 3, Wisconsin,
Counsel for Petitioners.

Of Counsel:

ROBERT C. KNEE,
Winters Bank Building,
Dayton, Ohio,

BRUCE LAYBOURNE,
Second National Building,
Akron, Ohio.